IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 28823 of 2007

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARUL GIRLS' POLYTECHNIC INSTITUTE (CO-EDUCATION) - Petitioner

Versus

THE STATE OF GUJARAT & 2 - Respondents

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Appearance :
MR ND NANAVATI, SR.ADV. WITH MR PRADEEP J.PATEL for Petitioner
MR SS SHAH, GOVERNMENT PLEADER WITH MR DIPEN DESAI, AGP for Respondents

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/12/2007

ORAL JUDGMENT

1. Rule. Mr.S.S.Shah, learned Government Pleader, waives service of notice of Rule on behalf of all the respondents. In the facts and circumstances of the case, particularly, since it is submitted by Mr.N.D.Nanavati, learned Senior Advocate with Mr.Pradeep Patel, learned counsel for the petitioners, that the examination for the first semester of the concerned disciplines are to commence with effect from 28.12.2007 and, with the consent of the parties, the petition is being heard and finally decided today.

2. At the outset, the learned Government Pleader submits that the dispute is only regarding the 90 seats which constitute 75% of the total revised intake seats (“State seats” for short) which have been filled up by the petitioner-Institute and that the admissions made by the petitioner-Institute to 25% of

total revised intake of the management seats (30 seats) (“Management seats” for short), as well as on 10 seats in the `dropout' category, is not in dispute.

3. This petition, under Article 226 of the Constitution of India, has been filed by the petitioner, i.e. Parul Girls' Polytechnic Institute, which is run by a registered Trust by the name of Parul Arogya Seva Mandal. By way of this petition, the petitioner has prayed for the issuance of a writ of Mandamus or any other appropriate Writ, order or direction to quash and set aside the order dated 29.10.2007 passed by the respondent No.2, whereby the respondent No.2, i.e. the Central Diploma Admission Committee (hereinafter referred to as “CDAC” for brevity) has disapproved of the admissions granted by the petitioner-Institute on 131 seats. Further, a declaration has been sought

to the effect that the admissions granted by the petitioner-Institute in the course of Diploma of Mechanical Engineering and Information Technology as just and proper.

4. The brief facts of the case, which emerge from the averments made in the petition as well as the other material on the record, are that the petitioner-Institute is recognized by the State Government and is affiliated to the Technical Education Board. The petitioner-Institute is running various Diploma programmes in the field of Engineering and Technology. In the month of May 2007, All India Council for Technical Education (“AICTE” for short) published an advertisement for existing Institutes/ proposed Institutes for increase in the existing “intake capacity” or for new “intake capacity” of students. Pursuant thereto, the

petitioner-Institute applied for increase in intake capacity and also requested for the change of status of the Institute from a Girls' Institute to a Co-education Institute. There is no dispute regarding the fact that for the existing intake capacity of 300 seats in the petitioner-Institute, the process for admission had already started for the academic year 2007-08 and was declared closed on 10.8.2007, by the CDAC. As per the Government Resolution dated 29.5.2004, the State Government has fixed 75% of the intake capacity as the State seats and 25% of the intake capacity as the seats to be filled in by the management of the concerned Institute. It is averred in the petition that the petitioner-Institute had also surrendered 75% of its seats in all faculties for admission to be granted by the CDAC, and had undertaken to fill up 25% of the management seats through its

own procedure. It is stated in the petition that vide order dated 17.9.2007, AICTE accorded increase in the intake capacity of the petitioner-Institute by 120 seats, i.e. 60 seats each in the faculty of Information Technology and Mechanical Engineering, respectively. The request to convert the petitioner-Institute into a Co-educational Institute was also granted. It is further stated in the petition that the admission process had already closed on 10.8.2007, but thereafter, there were vacancies arising out of “dropout” or “non-reporting students” and since there was also an increase in the intake capacity of 120 students, the petitioner Institute, by communication dated 21.9.2007, requested that it be permitted to fill up the vacant seats. It is stated that after protracted correspondence with CDAC, as mentioned in paragraph 3.4 of the petition, the

petitioner-Institute, with a view to see that the aspiring students do not lose a valuable year of study, gave an advertisement on 4.10.2007 in the daily newspaper “Sandesh” inviting applications from the eligible candidates in Diploma courses, including Mechanical Engineering and Information Technology and proceeded to fill up all the vacant seats, including the 11 seats arising out of “dropout” vacancies as well as the 120 seats arising out of the increased “intake capacity” granted to it. According to the petitioner-Institute, the Deputy Secretary, Education Department, had issued an order dated 4.10.2007 informing the CDAC that the power is granted to the Principals of the concerned Institutes to give admission on vacant seats, after the closure of the admission process, and, therefore, on the basis of this internal communication between the

Deputy Secretary, Education and the CDAC, the petitioner proceeded to issue an advertisement dated 4.10.2007, to fill up the vacant seats by a transparent method. It is also averred in the petition that the Principal of the petitioner-Institute was pressurized into surrendering the 75% of the State seats in the disciplines of Information Technology and Mechanical Engineering courses, which were increased vide order dated 17.9.2007, by threatening de-recognition. It is further stated that the Principal of the petitioner-Institute gave an Undertaking to surrender the 75% State seats, without consulting the management of the Institute. The case set out by the petitioner is that, by filling up of the vacant seats, including 11 dropout seats and 120 seats pertaining to the increased intake capacity, the petitioner-Institute has committed no

irregularity and therefore, the order dated 29.10.2007, whereby, the respondent No.2 has disapproved all the admissions granted by the petitioner is arbitrary and illegal and deserves to be set aside.

5. An affidavit-in-reply dated 27.11.2007, has been filed on behalf of the respondent No.3, contesting the claim of the petitioner that the admissions to the vacant seats, including 90 seats comprising 75% State seats have been carried out in a regular and proper manner. It is further stated in the reply-affidavit that the admission process conducted by the petitioner is contrary to the order dated 17.9.2007 passed by the appellate committee of the AICTE, whereby, it has been clearly stipulated that admissions on the revised intake capacity shall be granted only by the State Government through its

Centralized Counseling and, therefore, the order dated 29.10.2007 is just and proper and does not deserve to be interfered with by this Court. It is stated in the reply-affidavit that the petitioner-Institute has surrendered 75% of its seats vide letter dated 25.10.2007 and has also filed an Undertaking to this effect, stating therein that it shall fill up the rest of the 25% of the seats comprising the management seats in a fair and transparent manner. The admissions to the 75% surrendered seats comprising the State seats was to be conducted by the CDAC, and the petitioner has wrongly filled up all the seats including the 75% State seats. It is further contended in the reply-affidavit that the communication of the petitioner dated 26.10.2007 (Annexure-J to the petition) withdrawing the letter of the Principal as well as the Undertaking referred to

above, whereby 75% seats have been surrendered, does not disclose the fact that the petitioner had started the admission process vide advertisement dated 28.9.2007 and the later advertisement dated 4.10.2007. It is further contended in the reply-affidavit that the petitioner has thereby tried to mislead the CDAC by not disclosing the fact that the admission process had already been started by it, even before the permission to do so had been accorded by the State Government. On the other hand, the admission process regarding the 90 State seats had already been started, and was completed on 30/31.10.2007, whereby the said 90 seats have been filled up by the CDAC on the basis of the merit list prepared by the CDAC by conducting Centralized Counseling and, therefore, the admission process conducted by the petitioner for all the seats, including the 90 seats

falling in the State seats (being 75% of the 120 increased intake seats), is neither just nor proper and therefore, the petition deserves to be dismissed.

6. An additional affidavit has also been filed by the petitioner largely reiterating the stand taken in the petition and an affidavit-in-rejoinder has also been filed re-asserting the submissions made in the petition and denying the contentions raised in the reply. A sur-rejoinder has been filed by the respondent No.3 to the rejoinder filed by the petitioner and an additional affidavit, was submitted on the last date of hearing, i.e. 24.12.2007, with a copy to the other side, which is taken on the record of the case.

7. I have heard Mr.N.D.Nanavati, learned Senior Advocate with Mr. Pradeep J.Patel, learned counsel for the

petitioner and Mr.S.S.Shah, learned Government Pleader with Mr.Dipen Desai, learned Assistant Government Pleader for the respondents, at length and in great detail and have scrutinized the entire material on the record.

8. Mr.N.D.Nanavati, learned Senior Advocate with Mr.Pradeep J.Patel, learned counsel for the petitioner, has forcefully submitted that there is no irregularity in the admission process conducted by the petitioner since the same has been done by issuing an advertisement dated 4.10.2007 in a leading daily newspaper, in a fair and transparent manner. It is submitted that the petitioner has rightly conducted admissions for the vacant seats as well as the 120 seats, increased later on, and as per the judgment of the Supreme Court in **P.A.Inamdar and others v. State of Maharashtra and others – (2005)6 SCC**

537, the apportionment of seats and reservation by the State in an unaided educational Institute such as the petitioner-Institute is not permissible. Mr.Nanavati has submitted that pursuant to the issuance of the advertisement dated 4.10.2007, the merit list of eligible candidates was prepared and admission was granted on the basis of such merit. According to the learned Senior advocate, the method of admission adopted by the petitioner is a transparent one, whereas the State Government has adopted a closed-door procedure in the admissions to the 90 seats filled up by them where less meritorious students have been admitted. Mr.Nanavati has emphasized that the students admitted by the petitioner-Institute, including those 90 students admitted by it against the 75% State seats, should be permitted to appear in the examination to be commenced with

effect from 28.12.2007, as has been permitted in **Pushpagiri Medical Society v. State of Kerala and others – (2004) 13 SCC 702**. The sum and substance of the submissions advanced by Mr.Nanavati is that the admissions conducted by the petitioner-Institute to all vacant seats, including the 90 State seats, are just and proper and the petition deserves to be allowed.

9. Per contra, Mr.S.S.Shah, learned Government Pleader appearing for all the respondents, has vehemently contended that the petitioner has violated the specific condition imposed in letter dated 17.9.2007 (Annexure-B to the petition) whereby AICTE has granted an increased intake capacity of 120 seats to the petitioner-Institute, with the specific stipulation that the admission to these seats shall be made through the Centralized Counseling of the Government

of Gujarat **only.** Mr.Shah has further submitted that CDAC has been constituted pursuant to the directions of the Supreme Court contained in **Islamic Academy of Education and another v. State of Karnataka and others – (2003)6 SCC 697**, and, therefore, the CDAC has fixed 75% of the seats as being State seats, and 25% of the seats being Management seats to be filled up by the State and Management of the concerned institution respectively, and the action of the petitioner in filling up all the vacant seats, including the 75% State seats, is absolutely wrong and improper and contrary to the directions contained in Islamic Academy of Education and another v. State of Karnataka and others (supra). The said practice has been followed in the current academic year and has been accepted by the petitioner. Mr.Shah has vehemently submitted that the said admissions cannot be justified

especially in view of the fact that the petitioner-Institute has surrendered 75% of the seats and has given an Undertaking to the effect that it will fill up 25% of the management seats, which, the petitioner cannot resile from at this belated stage by taking conflicting stands. Mr.Shah has further submitted that the plea that the petitioner-Institute has been pressurized and threatened into surrendering 75% State seats and that the same has been done by the Principal, without the consent of the Management of the petitioner-Institute, is not at all convincing. There is no material on record in support of this assertion. It is asserted by Mr.Shah that the petitioner-Institute has conducted admissions pursuant to the advertisement dated 4.10.2007, without disclosing this fact to the CDAC whereas the Government, for the first time, has taken a decision

regarding the filling up of 75% State seats only on 24.10.2007. It is further submitted that by an order dated 24.10.2007 (Annexure-G to the petition) CDAC has specifically informed the petitioner of the conditions stipulated by the State Government and has clearly stipulated that the admission process shall be conducted by the CDAC only. Mr.Shah submits that after the surrender of 75% seats, CDAC has issued call letters/ communications through other modes to all the eligible students for appearing before the admission committee and counseling on the increased intake capacity of the Government seats has already begun and has been completed on 30/21.10.2007. It is therefore contended by the Government Pleader that the admission process on the increased intake capacity seats, to which the petitioner-Institute had already started the admission process on its own, in

contravention of the conditions stipulated by the AICTE while granting revised intake capacity, is illegal and improper. The learned Government Pleader has pointed out that the petitioner-Institute had sought permission to fill up 33 seats on its own vide letter dated 21.9.2007 (Annexure-C) to the petition, which had remained vacant after the regular admission process was over and, which permission was revised by the CDAC vide letter dated 28.9.2007 (page 36/37 to the petition). According to the learned Government Pleader, the dropout seats which have remained vacant have nothing to do with the increased intake capacity seats which were granted to the petitioner vide order dated 17.9.2007 by the AICTE and, therefore, the petitioner cannot confuse the two in order to justify its wrong action in filling up the 75% State seats. The crux of the submissions made by the learned

Government Pleader is that the petitioner has wrongly carried out the admission to the vacant seats, including those 90 seats comprising 75% State seats, in contravention of the stipulated conditions and norms, and such an action ought not to be upheld by this Court. It is forcefully contended by Mr.Shah that, in the light of this position, the question of permitting the students who have wrongly been admitted by the petitioner-Institute against the State seats, in the examinations commencing with effect from 28.12.2007, does not arise, since to do so would amount to perpetuating an illegality. Mr.S.S.Shah submits that the letter dated 1.11.2007 referred to by the petitioner in paragraph 3.16 of the petition is annexed as Annexure-R10 to the affidavit-in-reply filed on behalf of the respondent No.3. According to this letter, addressed by the Managing

Trustee to the Member Secretary, CDAC, the petitioner-Institute has stated that it is not possible to accommodate additional 90 students unless and until the intake capacity is increased by the Government. The learned Government Pleader has thereafter, referred to another letter of the same date and has emphasized that the outward number of the first letter dated 1.11.2007 to be found at page 146 of the paper-book is 3581. Thereafter, the learned Government Pleader has drawn the attention of this Court to another letter dated 1.11.2007, also annexed as Annexure-RX to the reply at page 147, the outward number of which is 3583. This letter has also been addressed by the Managing Trustee of the petitioner-Institute to the Member Secretary, Central Diploma Admission Committee, and the contents thereof are reproduced below:

> *"Respected Sir,*
> *This is to inform you that we have registered the students those who are admitted through CDAC in our Institute."*

According to the learned Government Pleader, since the petitioner-Institute has registered the students who are admitted through CDAC in their Institute, 90 seats comprising 75% State seats have already been accepted by the petitioner-Institute, and the petitioner cannot now back out from the said position. Further, admissions to the 90 seats against 75% of the State seats which have been carried out by the petitioner on its own cannot be approved. Mr.Shah has therefore prayed that the petition be dismissed.

10. There is no dispute regarding the fact that for the existing intake capacity of 300 seats of the petitioner-Institute, the admission process had started for the academic year 2007-08, which was

concluded on 10.8.2007. There is also no dispute regarding the fact that vide Government Resolution dated 29.5.2004 (Annexure-RI to the reply-affidavit dated 27.12.2007 filed by the respondent No.3), the State Government had fixed 75% of the intake capacity as the State seats and 25% of the intake capacity as the management seats. It is also an admitted fact that the State Government has, vide Government Resolution dated 29.5.2007, annexed as Annexure-RII to the reply-affidavit of the respondent No.3, framed Rules of admission to Diploma Courses in all Institutes governed by CDAC by which admission to 75% of the total intake being the State seats are to be granted by the CDAC and 25% management seats are to be filled up by the concerned Institute. By granting increased intake capacity to the petitioner-Institute, 60 seats were granted by the faculty of Information

Technology and 60 seats in the faculty of Mechanical Engineering, i.e. 120 seats were granted in all by the increased intake capacity to the petitioner-Institute. This is amply evident from the order dated 17.9.2007 (Annexure-B to the petition). It is also clear from the said order that a specific condition has been imposed to the effect that admission shall be made through the Central counseling by the State Government **only**. Out of the 120 increased intake capacity seats granted to the petitioner Institute, 75% i.e. 90 seats are required to be filled up by the State Government as per the Government Resolutions dated 29.5.2004 and 29.5.2007. Only 25% of the seats i.e. 30 seats, which are the Management seats, can be filled up by the petitioner-Institute. The petitioner-Institute has surrendered 75% of the seats to the CDAC, which is also evident

from the letter dated 25.10.2007 which is available at page 55 of the paper-book. The petitioner-Institute has also filed an Undertaking to the effect that it has surrendered 75% seats to the CDAC and would follow a fair and transparent procedure for admission on the remaining 25% management seats. It is the surrender of 75% of the seats and the Undertaking filed by the petitioner-Institute which is sought to be retracted by the petitioner in the petition.

11. In the light of the documents on record, I am of the considered opinion that the petitioner-Institute has accepted the 75% State seats, to be filled up by the State Government and has also surrendered the same. The petitioner has further undertaken to fill up the 25% Management seats on its own. Having done so, the stand taken by the petitioner-

Institute in the petition that the respondent No.2 has pressurized the Principal of the petitioner-Institute to surrender the increased seats in the disciplines of Mechanical Engineering and Information Technology, by threatening de-recognition is highly improbable. Apart from a bald assertion to this effect, there is no material on record to prove that such pressure tactics were ever adopted by the respondent No.2. It is evident that this stand is an afterthought by the petitioner, in order to justify its wrongful action of granting admissions to students against the State seats, which could not have been done in the first place.

12. Regarding the withdrawal of the letter surrendering 75% State seats and the Undertaking given by the petitioner, it can only be said that such a stand

cannot be approved by this Court since the petitioner cannot be allowed to approbate and reprobate in the same breath. There is not an iota of evidence on record that any pressure tactics or threats were ever administered to the petitioner-Institute by the concerned respondent. On the contrary, it is evident from the material on record that the petitioner-Institute has proceeded to conduct admissions against the seats which were not available to it as per norms and, after having done so, is trying to justify its action by raising this plea which is not supported by any material on record. In the firm opinion of this Court, the petitioner is bound to surrender 75% of the increased intake capacity seats to the State Government as per its undertaking and accepted practice, on which only the State Government can conduct admissions. In the light of the above, the action of

the petitioner in conducting the admissions to the 75% State seats (90 seats) in contravention of stipulated conditions and norms, is highly improper, and, therefore, cannot be justified or upheld.

13. The State Government has already started the admission process for its 75% seats, as is evident from the further affidavit dated 20.12.2007 filed on behalf of the respondent No.3, and the seats available to the State have been filled up by the State after following the procedure of counseling and strictly on the basis of merit, by operating the merit list from Sr.No.39243 of the merit list. When the admission to the 75% State seats has already been conducted by the State Government, the prayer of the petitioner to consider the admission made by it against the same 75% State seats, as being legal and proper and to permit the

students so admitted to appear in the examination commencing from 28.12.2007, cannot be accepted.

14. A perusal of the advertisement dated 4.10.2007 makes it clear that it is worded in absolutely vague terms and is misleading, inasmuch as it does not specify the number of seats for which applications are being sought. By way of this advertisement, applications have also been sought to the faculties for which seats have not been increased, meaning thereby, it is not an advertisement for the seats granted under the increased capacity but is a general advertisement for all faculties. It is also relevant to note that the Government decision approving the grant of increased capacity seats to the petitioner-Institute came to be approved only on 24.10.2007, due to the Election Code of Conduct, which was prevailing

during the relevant period of time. The petitioner-Institute has already issued an advertisement much before 24.10.2007, and has processed the admissions on its own without permission from the State Government and that too, for an unspecified number of seats. Not only that, the petitioner-Institute has proceeded to fill up all the seats, including the State seats on its own accord, much before the permission to do so was accorded by letter dated 24.10.2007 (Annexure-H to the petition).

15. Mr.Nanavati, learned Senior Advocate for the petitioner, has relied on paragraph-124 of the judgment rendered in P.A.Inamdar and others v. State of Maharashtra and others (supra), which, will not be applicable to the facts and circumstances of the case in view of the fact that the petitioner has itself accepted the 75% State seats and

surrendered the seats comprising the same vide letter dated 25.10.2007 which is at page 55 to the petition along with an Undertaking at page 57 to the petition.

16. The ratio of 75% and 25% has been fixed by the State Government vide Resolution dated 29.5.2004 at Annexure-R1 to the petition in pursuance of the direction of the Supreme Court in Islamic Academy of Education and another v. State of Karnataka and others, which practice has been accepted by the petitioner and followed in the current academic year as well, as is evident from the communications dated 2.7.2007 and 5.7.2007, annexed as Annexure-RIII to the reply affidavit of the respondents. The prayer of the learned counsel for the petitioner that directions should be issued to permit the students to appear in the examinations on the basis of the

decision rendered in Pushpagiri Medical Society v. State of Kerala and others (supra) cannot be accepted for the simple reason that in that case, such a direction was given on instructions and consent of the learned counsel for the concerned Institute whereas in the present case, such a request is vehemently opposed by the learned counsel for the respondents. Moreover, the judgment in Pushpagiri Medical Society v. State of Kerala and others does not lay down any principle of law that in such matters, the Court is bound to give permission to the students to appear in the examination, if the admission has been granted in contravention of norms. That judgment turns on its own facts and has no relevance, whatsoever, to the case in hand.

17. It is a settled principle of law that

the Courts will not issue any directions which will amount to perpetuating an illegality. It has been laid down in a catena of judgments that an illegality once committed cannot be made the basis in order to claim any subsequent relief. The action of the petitioner in filling up 90 seats which were to be filled up by the State Government, even after having surrendered them, cannot be upheld by this Court. Once the admissions conducted on these 75% State seats is held to be improper, the students admitted to these seats cannot be permitted to sit in the examinations, since the State Government has itself conducted admissions for these very same seats.

18. In the light of the detailed discussion made hereinabove, this Court is of the opinion that the admission made by the petitioner-Institute to the 90 seats

which comprise 75% State seats as well as one seat from the dropout category, is improper and not in accordance with the norms and stipulated conditions, and, therefore, cannot be upheld. The admission made by the petitioner-Institute to 25% management seats (30 seats) as well as on 10 seats in the dropout category is not in dispute, as per the statement made at the Bar by the learned Government Pleader.

19. In the ultimate analysis, there is no merit in the petition and the same is dismissed. Rule is discharged. There shall be no orders as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)